

*Capitol Credit Services, Inc. v.
Justice of the Peace Court No. 16*
C.A. No. 08A-02-003 WLW
August 15, 2008

Before the Court is Capitol Credit Services Inc.’s (“Petitioner” or “Capitol Credit”) Petition for a Writ of Certiorari and the Justice of the Peace Court of the State of Delaware, in and for Kent County, Court No. 16’s (“Respondent” or “JP Court”) Motion to Dismiss. JP Court urges that the Court dismiss the petition pursuant to Rule 12(b)(1), for lack of subject matter jurisdiction, and Rule 12(b)(7), for failure to join a party. The Court denies the petition, rendering Respondent’s motion to dismiss moot.

Background

Capitol Credit seeks review of the JP Court’s decision dismissing six writs of scire facias to revive judgments rendered twelve to fourteen years ago.¹ The JP Court decision cited to the ten-year statute of limitation on judgments resulting in liens on real estate, given by 10 *Delaware Code* § 4711, when it declared the judgments are lost.² Petitioner propounds that 10 *Delaware Code* § 9581 is instead the appropriate

¹ See JP16-94-C3104 (finding that judgment is over 12 years old); JP16-95-C695 (finding that judgment is over 12 years old); JP16-94-C5556 (finding that judgment is over 12 years old); JP16-93-C3637 (finding that judgment is over 13 years old); JP16-96-C4341 (finding that judgment is over 12 years old); JP16-94-C5560 (finding that judgment is over 14 years old).

² Title 10 *Delaware Code* § 4711 provides for the “[t]ime limitation of judgment lien [and] extension of time.” 10 *Del.C.* § 4711. The language and length of sentences in § 4711 reflect its antiquity. The portions relevant to scire facias state as follows:

No judgment . . . shall continue a lien upon real estate for a longer term than 10 years . . . unless, within the term of 10 years, the lien . . . is renewed . . . by a written agreement . . . and certified . . . by scire facias If a writ of scire facias is sued out of the Court before the expiration of the term of 10 years, and the term expires during the pendency of the proceedings upon the scire facias, the lien of the judgment

statutory provision, which addresses the execution of judgments,³ arguing that a judgment lasts in perpetuity by virtue of the availability of scire facias. Rather than appeal the decision to the Court of Common Pleas (“CCP”) for a trial *de novo*, Capitol Credit chose to petition this Court for a writ of certiorari,⁴ naming as a respondent only the JP Court. At the time of filing the petition, the 15-day opportunity to appeal to CCP had expired.

Standard

On a petition for a writ of certiorari, the Court reviews for certain threshold requirements.⁵ “[T]he judgment below must be final, and there must be no other available basis for review.⁶ Some claims may not be reviewed on certiorari.⁷ The Court has no jurisdiction to hear claims where the threshold qualifications are not met

shall continue until final determination by the Court of the rights of the respective parties thereto

³ Title 10 *Delaware Code* § 9581 provides that

[n]o execution shall be issued on a judgment . . . after the lapse of 5 years from the time execution might first have issued [or] until the judgment is revived by scire facias. The writ of scire facias may be according to the form prescribed in this subchapter, with necessary variations. . . .

⁴ 10 *Del.C.* § 562.

⁵ *Chelsea on the Square Apartments v. Justice of the Peace Court No. 13*, 2007 WL 625365 (Del.Super.Ct. Jan. 12, 2007) (citing *Matter of Butler*, 609 A.2d 1080, 1081 (Del. 1992)).

⁶ *Id.* (citing *Matter of Butler*, 609 A.2d at 1081 (citing *Shoemaker v. State*, 375 A.2d 431, 438 (Del. 1977)).

⁷ *Id.* (citing *Matter of Butler*, 609 A.2d at 1081 (citing *Castner v. State*, 311 A.2d 858 at 858 (1973) (stating that claims where evidence must be weighed are inappropriate for certiorari review)).

**Capitol Credit Services, Inc. v.
Justice of the Peace Court No. 16**
C.A. No. 08A-02-003 WLW
August 15, 2008

and will dismiss the proceedings.⁸

Discussion

This Court has jurisdiction to grant certiorari review “if the right to appeal or other adequate remedy is unavailable, a question of grave public policy and interest is involved, and no other basis for review is available.”⁹ Title 10 Delaware Code §§ 9570 and 9571 provide a right to and procedures for an appeal to CCP by a party against whom judgment is rendered by a justice of the peace. Capitol Credit did not appeal any of the six decisions within the statutory deadline of 15 days of the final order.¹⁰ Since Capitol Credit had the opportunity to appeal, another basis of review was available. Therefore, this Court does not have jurisdiction over this matter for review on certiorari.¹¹

If the Court were to review on certiorari, it would have to dismiss for failure to join all interested parties, namely the individual justices of the peace and the

⁸ *Id.* (citing *Matter of Butler*, 609 A.2d at 1081 (citing *Castner*, 311 A.2d at 858)).

⁹ *Chelsea on the Square Apartments v. Justice of the Peace Court No. 13*, 2007 WL 625365, *1 (Del.Super.Ct. Jan. 12, 2007) (citing *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992)). See also *Shoemaker v. State*, 375 A.2d 431, 438 (Del. 1977) (providing that review under a common-law writ of certiorari may be appropriate in the absence of a right to appeal).

¹⁰ 10 *Del.C.* § 9571.

¹¹ Capitol Credit urges that because an appeal to CCP results in a trial *de novo*, it does not provide for a review of the alleged JP Court error of law. Further, they assert that in all likelihood, on appeal, the parties will not appear, resulting in a default judgment, the decision of which would not provide an analysis of the law at issue. Nonetheless, the Court has no jurisdiction to grant certiorari review.

*Capitol Credit Services, Inc. v.
Justice of the Peace Court No. 16*
C.A. No. 08A-02-003 WLW
August 15, 2008

parties in the cases named in the petition, pursuant to Civil Rule 12(b)(7).¹² The petition requests that the Court review the law for improper application. The review would determine whether judgments could suddenly be revived and subject to execution, and therefore clearly touches upon the interests of these parties.

Conclusion

The Court finds that it must *deny* Capitol Credit's petition for writ of certiorari as it fails to meet the threshold requirements for review. Respondent's Motion to Dismiss is *moot*.

IT IS SO ORDERED.

R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution

¹² Capitol Credit advances that all interested parties are named since they request review of an alleged consistent erroneous application and analysis of law by the JP Court. Capitol Credit asserts that these six cases are amongst hundreds of their kind brought by Petitioner every year.